



~~May 18, 2004, CPC~~  
~~July 20, 2004 CPC~~  
~~August 17, 2004 CPC~~  
September 22, 2004 BS

STAFF'S  
REQUEST ANALYSIS  
AND  
RECOMMENDATION

04SN0232

Douglas Sowers

Matoaca Magisterial District  
Watkins Elementary, Midlothian Middle and Midlothian High School Attendance Zones  
West line of Otterdale Road

REQUEST: Rezoning from Agricultural (A) to Residential (R-12) of 242.3 acres with Conditional Use Planned Development to permit exceptions to Ordinance requirements. **THIS REQUEST LIES WITHIN THE UPPER SWIFT CREEK PLAN AREA AND WAS FILED AFTER FEBRUARY 11, 2004.**

PROPOSED LAND USE:

A mixture of residential uses, to include single family and cluster homes, along with supporting recreational uses and a temporary modular unit for the purpose of marketing the development are planned. The applicant has agreed to limit development to a density of 2.0 dwelling units per acre, yielding approximately 484 dwelling units.

PLANNING COMMISSION RECOMMENDATION

RECOMMEND DENIAL.

STAFF RECOMMENDATION

Recommend denial for the following reasons:

- A. While the proposed residential zoning and land use complies with the Upper Swift Creek Plan which suggests that the property is appropriate for residential development of 2.0 units per acre or less, the request fails to address the full impact of this development on area roads, including the dedication of the Powhite Parkway Extended right of way.

- B. The proffered conditions do not fully address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan. Specifically, the need for roads is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program, and the impact of this development is discussed herein. The proffered conditions do not adequately mitigate the impact on road facilities, thereby not insuring adequate service levels are maintained and protecting the health, safety and welfare of County citizens.
- C. The application fails to address connectivity to adjacent developments.

(NOTE: CONDITIONS MAY BE IMPOSED OR THE PROPERTY OWNER MAY PROFFER CONDITIONS. THE CONDITIONS NOTED WITH "STAFF/CPC" WERE AGREED UPON BY BOTH STAFF AND THE COMMISSION. CONDITIONS WITH ONLY A "STAFF" ARE RECOMMENDED SOLELY BY STAFF. CONDITIONS WITH ONLY A "CPC" ARE ADDITIONAL CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION.)

#### CONDITION

The Textual Statement last revised July 26, 2004, shall be considered the Master Plan. (P)

#### PROFFERED CONDITIONS

The Owners-Applicants in this zoning case, pursuant to Section 15.2-2298 of the Code of Virginia (1950 as amended) and the Zoning Ordinance of Chesterfield County, for themselves and their successors or assigns, proffer that the development of the property known as Chesterfield County Tax ID 714-694-7687-00000 (the "Property") under consideration will be developed according to the following conditions, if and only if, the rezoning request for R-12 is granted. In the event the request is denied or approved with conditions not agreed to by the Owners-Applicants, these proffers and conditions shall be immediately null and void and of no further force or effect.

1. Timbering. Except for the timbering approved by the Virginia State Department of Forestry for the purpose of removing dead or diseased trees, there shall be no timbering on the Property until a land disturbance permit has been obtained from the Environmental Engineering Department and the approved devices have been installed. (EE)
2. Utilities. Except for one temporary model home within a modular unit, the public water and wastewater systems shall be used. (U)
3. Cash Proffer. The applicant, sub divider, or assignee(s) shall pay the following to the County of Chesterfield prior to the issuance of each building permit for infrastructure improvements within the service district for the Property:
  - a. \$9,000.00 per dwelling unit, if paid prior to July 1, 2004; or

- b. The amount approved by the Board of Supervisors not to exceed \$9,000.00 per dwelling unit adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2003, and July 1 of the fiscal year in which the payment is made if paid after June 30, 2004.
  - c. Provided, however, that if any building permits issued on the Property are for senior housing, the dwelling units of which meet the occupancy requirements for “age 55 or over” housing as set forth in Section 3607 of the Fair Housing Act, 42 USC Section 3601 et seq., as amended by the Fair Housing Amendments Act of 1988, and of 24 CFR Section 100.304 in effect as of the date of the Rezoning, and which are subject to the occupancy requirements that no person under 19 shall reside in each unit, the amount approved by the Board of Supervisors, but not to exceed \$4,815 per dwelling unit as adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2003 and July 1 of the fiscal year in which the payment is made if paid after June 30, 2004. At the time of payment, the \$4,815 will be allocated pro-rata among the facility costs as follows: \$598 for parks and recreation, \$324 for library facilities, \$3,547 for roads, and \$346 for fire stations. Payments in excess of \$4,815 shall be prorated as set forth above.
  - d. Provided, furthermore, that if the applicant, subdivider or assignee(s) dedicates the Powhite Parkway Extended right-of-way to Chesterfield County as required in Proffered Condition 11.(b), the cash proffers payment shall be reduced by the road improvement component (“the road credit”) beginning with payment of the first dwelling unit and ending with payment for the dwelling unit for which the road credit cumulatively equates to one million five hundred dollars (\$1,000,500). (B&M)
- 4. Density. The total number of units shall not exceed 2.0 units per acre. (P)
  - 5. Lot Size. Any lots contiguous to the North Hundred Subdivision shall contain a minimum of 25,000 square feet. A maximum of twenty-five (25) lots shall be located contiguous to the “North Hundred Subdivision”. (P)
  - 6. Buffer. A fifty (50) foot buffer, exclusive of easements and required building setbacks, shall be provided along the south line of the North Hundred Subdivision. This buffer shall comply with the requirements of the Zoning Ordinance for Sections 19-520 through 19-522. (P)
  - 7. Age-Restricted Units. Age restricted dwelling units shall be grouped on a particular portion of the Property and shall not be scattered among other residential dwelling units. At the time of recordation of a subdivision plat, lots for age-restricted units shall be so noted on the plat. (P)

8. BMPs.
  - (a) For areas that drain through a regional BMP, temporary sediment basins shall remain in place and/or new BMPs constructed to achieve the .22 phosphorus standard until the downstream regional BMP into which the development will drain has been constructed.
  - (b) For areas that do not drain through a regional BMP, temporary sediment basins shall remain in place and/or new BMPs constructed to achieve the .22 phosphorus standard until Chesterfield County obtains its initial permit for implementation of the Upper Swift Creek Watershed Plan. (EE)
9. Phasing of Development. No single family shall be recorded prior to January 1, 2006, and no more than one-hundred single family lots shall be recorded prior to January 1, 2007.
10. Road Connections. There shall be no public road connection to Sly Fox Road. (P)
11. Transportation.
  - (a) In conjunction with recordation of the initial subdivision plat, forty-five (45) feet of right-of-way along the west side of Otterdale Road, measured from a centerline based on VDOT Urban Minor Arterial Standards (50 mph) with modifications approved by the Transportation Department, of that part of Otterdale Road immediately adjacent to the Property, shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County.
  - (b) In conjunction with recordation of the initial subdivision plat, or within sixty (60) days from a written request by Chesterfield County, whichever occurs first, a 200 foot wide limited access right-of-way for Powhite Parkway Extended from Otterdale Road through the property shall be dedicated to and for the benefit of Chesterfield County. The exact location of this right-of-way shall be approved by the Transportation Department.
  - (c) Direct access from the Property to Otterdale Road shall be limited to four (4) public roads. The exact location of these accesses shall be approved by the Transportation Department.
  - (d) To provide an adequate roadway system, the developer shall be responsible for the following improvements:

- i. Construction of additional pavement along Otterdale Road at each approved access to provide left and right turn lanes, if warranted, based on Transportation Department standards.
  - ii. Widening/improving the west side of Otterdale Road to an eleven (11) foot wide travel lane, measured from the centerline of the road, with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder, and overlaying the full width of the road with one and half (1.5) inches of compacted bituminous asphalt concrete with modifications approved by the Transportation Department, for the entire Property frontage.
  - iii. Dedication to and for the benefit of Chesterfield County, free and unrestricted, of any additional right-of-way (or easements) required for the improvements identified above.
- (e) Prior to any construction plan approval, a phasing plan for the required road improvements, as identified in Proffered Condition 11.(d), shall be submitted to and approved by the Transportation Department.
12. Passive Recreation. The developer shall dedicate to and for the benefit of Chesterfield County, free and unrestricted, a thirty (30) foot wide ingress/egress easement along the length of Swift Creek within a conservation area from the eastern to western parcel boundaries, exclusive of the Powhite Parkway Extended right-of-way as identified in Proffered Condition 11.(b). This easement is intended for use by the Parks and Recreation Department to provide a passive recreation facility, and shall be recorded after recordation of the Powhite Parkway Extended right-of-way. (P&R)

#### GENERAL INFORMATION

Location:

West line of Otterdale Road, south of Old Hundred Road. Tax ID 714-694-7687 (Sheet 9).

Existing Zoning:

A

Size:

242.3 acres

Existing Land Use:

Vacant

### Adjacent Zoning and Land Use:

North - A and R-40; Single family residential or vacant

South - A; Single family residential or vacant

East - A, O-2 with Conditional Use Planned Development (Greenspring) and R-15; Single family residential or vacant

West - R-15; Vacant

### UTILITIES

#### Public Water System:

A sixteen (16) inch water line extends along the west side of Otterdale Road and terminates approximately 5,200 feet south of this site. This water line is served from the Clover Hill Water Tank in the Clover Hill Pressure Zone. In addition, a twenty-four (24) inch water line extends along the north side of Midlothian Turnpike and terminates approximately 400 feet west of Huguenot Springs Road. A sixteen (16) water line is under design to extend south along Dry Bridge Road and Old Hundred Road to serve the proposed Halsley Development. This water line will be served from the Huguenot Springs Water Tank in the Huguenot Springs Pressure Zone and upon completion, will terminate approximately 4,600 feet north of this site.

The request site is located in close proximity to the future boundary between the Huguenot Springs Pressure Zone and the Clover Hill Pressure Zone. Precise delineation of the pressure zone boundary and direction of water service will be determined at time of development. Use of the public water system is intended. (Proffered Condition 2)

Preliminary computer simulated flow tests indicate a potential for high domestic flow pressure problems in areas less than 250 feet in elevation. Individual pressure regulators may be necessary on service laterals in this area.

#### Public Wastewater System:

A fifty-four (54) inch wastewater trunk line extends along the north side of Genito Road approximately 9,800 feet southeast of this site. A forty-two (42) inch wastewater trunk line is under design to extend from Genito Road along Swift Creek and Nelsons Branch to serve the proposed Halsley Development. On completion, this trunk line could serve the majority of the site. Use of the public wastewater system is intended. (Proffered Condition 2)

### ENVIRONMENTAL

#### Drainage and Erosion:

The property drains southwest to Swift Creek and then via Swift Creek to Swift Creek Reservoir. The property is wooded and should not be timbered without first obtaining a land-disturbance permit from the Environmental Engineering Department (Proffered

Condition 1). This will insure that adequate erosion control measures are in place prior to any land disturbance.

#### Water Quality:

The property will be required to comply with the Regional Best Management Practice (BMP) Master Plan. Pro-rata fees for construction of BMP facilities and maintenance of regional BMPs will therefore be required.

An RCM-NRPA with limited uses is located on the property along Otterdale Road. A watershed BMP, through which the majority of the property drains, is located to the rear of the property adjacent to Swift Creek. Due to the expected changes to the Chesapeake Bay Preservation Ordinance, the developer should contact the Water Quality Section to determine if the proposed creek through which this property drains exhibits perennial stream characteristics.

To address concerns of the Planning Commission and area citizens, the applicant has agreed to additional water quality measures. (Proffered Condition 8)

#### PUBLIC FACILITIES

The need for fire, school, library, park and transportation facilities is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program. This development will have an impact on these facilities.

#### Fire Service:

The Public Facilities Plan indicates that fire and emergency medical service (EMS) calls are expected to increase forty-four (44) to seventy-eight (78) percent by 2022. Six (6) new fire/rescue stations are recommended for construction by 2022 in the Plan. In addition to the six new stations, the Plan also recommends the expansion of five (5) existing stations. Based on 484 dwelling units, this request will generate approximately eight-eight (88) calls for fire and emergency medical services each year. The applicant has addressed the impact on fire and EMS (Proffered Condition 3).

The Midlothian Fire Station, Company Number 5, currently provides fire protection and emergency medical service. When the property is developed, the number of hydrants, quantity of water needed for fire protection, and access requirements will be evaluated during the plans review process.

The applicant has proffered not to make street connections to the North Hundred Subdivision (Proffered Condition 10). Sly Fox Road in the North Hundred Subdivision is a stub road that was platted for connection to the applicant's property. Although this connection is not required to satisfy Ordinance requirements for the number of access points into this proposed development, in an emergency situation, the connection would benefit both the applicant's project and the North Hundred development. The Fire Department

continues to support connectivity between subdivisions so that multiple access points are available to assist in an emergency response. Therefore, the Fire Department does not support the acceptance of Proffered Condition 10.

#### Schools:

Approximately 257 students could be generated by this development. This property is currently in the Watkins Elementary School attendance zone: capacity - 752, enrollment - 855; Midlothian Middle School: capacity - 1,331, enrollment - 1,399; and Midlothian High School: capacity - 1,568, enrollment - 1,600.

There are currently eight (8) trailers at Watkins Elementary, five (5) trailers at Midlothian Middle and five (5) trailers at Midlothian High School.

This request will have an impact on all schools involved. A portion of Watkins was redistricted to Evergreen and Swift Creek. This case, along with others in the zone, will put a further strain on the capacity of Watkins. The applicant has agreed to participate in the cost of providing for area school needs. (Proffered Condition 3)

#### Libraries:

Consistent with the Board of Supervisors' policy, the impact of development on library services is assessed countywide. Based on projected population growth, the Public Facilities Plan identified a need for additional library space throughout the County. Even if the facility improvements that have been made since the Plan was published are taken into account, there is still an unmet need for additional library space throughout the County.

Development in this area of the county would most likely impact either the existing Clover Hill Library, the Midlothian Library or a proposed new branch in the Genito Road area. The Plan indicates a need for additional library space in this area of the County. The applicant has agreed to participate in the cost of providing for area library needs. (Proffered Condition 3)

#### Parks and Recreation:

The Public Facilities Plan identifies the need for three (3) new regional parks, seven (7) community parks, twenty-nine (29) neighborhood parks and five (5) community centers by 2020. In addition, the Plan identifies the need for ten (10) new or expanded special purpose parks to provide water access or preserve and interpret unique recreational, cultural or environmental resources. The Plan also identifies shortfalls in trails and recreational historic sites.

The Upper Swift Creek Plan states "Corridors along the perennial tributaries of Swift Creek Reservoir should be preserved to maintain natural vegetation, wildlife habitats, natural drainage patterns and the water quality of the reservoir, while also permitting passive recreation for residents or employees in adjoining development. Areas along these



tributaries should be protected by careful site design of the adjoining development; some areas may be suitable for limited pedestrian, bicycle or horse trails, or for other passive recreation activities serving the primary land use.” These linear conservation/passive recreation areas are indicated in the Plan.

The Plan also states “Community park land is scarce in the Upper Swift Creek area. Computing the need for the unserved Phase One and Two population (approximately 44,900), approximately 300 acres of community park land would be needed. There is an opportunity, however, to develop the remainder of the needed park acreage into linear parks along Swift Creek and other tributaries of the Swift Creek Reservoir.”

The applicant has offered measures to assist in addressing the impact of this proposed development on these Parks and Recreation facilities (Proffered Condition 3). The applicant has also offered to dedicate an easement for a passive recreation facility along the length of Swift Creek exclusive of the Powhite Parkway Extended right of way. (Proffered Condition 12)

#### Transportation:

The property (242.3 acres) is currently zoned Agricultural (A), and the applicant is requesting rezoning to Residential (R-12) with Conditional Use Planned Development. The applicant has proffered a maximum density of 2.0 units per acre (Proffered Conditions 4). Based on single family trip rates, development could generate approximately 4,440 average daily trips. These vehicles will be initially distributed along Otterdale Road, which had a 2004 traffic count of 858 vehicles per day (VPD).

The Thoroughfare Plan identifies a proposed east/west limited access facility (“Powhite Parkway Extended”), with a recommended right of way width of 200 feet, extending through the property. The applicant has proffered to dedicate the Powhite Parkway Extended right of way in exchange for not paying the road improvement component of the cash proffer in an amount equal to \$1,000,500 (Proffered Condition 3). The applicant should address the full impact of this development on area roads, including dedication of the Powhite Parkway Extended right of way. Therefore, staff cannot support this request.

The Thoroughfare Plan also identifies the extension of Woolridge Road, as a major arterial with a recommended right of way width of ninety (90) feet, from Genito Road to Route 288. Otterdale Road currently serves as the major north/south road for this part of the county. Due to its current condition, reconstructing Otterdale Road to handle increased traffic will be very costly. Once the proposed Woolridge Road Extended from Genito Road to Route 288 and the proposed east/west major arterial, located south of Powhite Parkway Extended, from Otterdale Road to Woolridge Road Extended are constructed, they could better handle north/south travel. In order to avoid major reconstruction of sections of Otterdale Road and eliminate bridging Otterdale Road for Powhite Parkway Extended, Staff recommends that cul-de-sacs be constructed on Otterdale Road at Powhite Parkway Extended. These cul-de-sacs are anticipated to be provided when Powhite Parkway Extended is constructed. In shifting the traffic from Otterdale Road to Woolridge Road Extended, it is anticipated that

Woolridge Road Extended from the East/West Arterial to Route 288 may need to be a six-lane facility; therefore, the recommended right of way width on this section of road should be increased from 90 to 120 feet. Also included in the Thoroughfare Plan is a proposed north/south major arterial, with a recommended right of way width of ninety (90) feet, extending from Otterdale Road northward through the subject property. Due to topography and the development that has either occurred or has been approved in the area, staff supports eliminating the north/south arterial through the subject property. Staff will recommend these changes to the Thoroughfare Plan, with upcoming Comprehensive Plan amendment(s).

The Thoroughfare Plan identifies Otterdale Road as major arterial with a recommended right of way width of ninety (90) feet. The applicant has proffered to dedicate forty-five (45) feet of right of way, measured from the centerline of Otterdale Road, in accordance with that Plan. (Proffered Condition 11.a)

Access to major arterials, such as Otterdale Road, should be controlled. The applicant has proffered that direct access from the property to Otterdale Road will be limited to four (4) public roads (Proffered Condition 11.c). Based on the anticipated location of the Powhite Parkway Extended, two (2) of these accesses are anticipated to serve the northern part of the property and two (2) accesses will serve the southern part of the property.

To address neighborhood concerns, the applicant has also proffered that no public road connection will be provided from the property to the adjacent subdivision to the north (North Hundred Subdivision) via Sly Fox Road. (Proffered Condition 10)

The Subdivision Ordinance requires that subdivision streets must conform to the Planning Commission Stub Road Policy, which suggests that traffic volumes on those streets should not exceed an acceptable level of 1,500 vehicles per day. In accordance with the Stub Road Policy, residential collector streets may be required through parts of the property.

The traffic impact of this development must be addressed. The applicant has proffered to: 1) construct additional pavement along Otterdale Road at each approved access to provide left and right turn lanes, based on Transportation Department standards; and 2) widen/improve the west side of Otterdale Road to an eleven (11) foot wide travel lane with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder, and overlay with asphalt the full width of the road for the entire property frontage. (Proffered Condition 11.d.)

Most area roads in this part of the county have little or no shoulders with poor vertical and horizontal alignments. The roads need to be improved to address safety and accommodate the increase in traffic generated by this development. Otterdale Road will be directly impacted by this development. Sections of Otterdale Road have nineteen (19) to twenty (20) foot wide pavement with no shoulders, fixed objects adjacent to the edge of the pavement, and substandard vertical and horizontal alignments. The capacity of this road is acceptable (Level of Service B) for the volume of traffic it currently carries (858 VPD). As development continues in this part of the county, traffic volumes on area roads will

substantially increase. Cash proffers alone will not cover the cost of the improvements needed to accommodate the traffic increases. No road improvement projects in this part of the county are included in the Secondary Road Six-Year Improvement Plan.

As earlier stated, the proposed Powhite Parkway Extended is planned to extend through the property. The applicant has proffered to dedicate a 200 foot wide right of way for Powhite Parkway Extended through the property (Proffered Condition 11.b.) Dedication of the Powhite Parkway Extended right of way would not reduce the number of dwelling units that the applicant would be allowed to develop on the property.

Traffic noise from Powhite Parkway Extended will impact development on the property. The Subdivision Ordinance requires a 200-foot setback, exclusive of required yards, from the Powhite Parkway Extended right-of-way, unless a noise study demonstrates that a lesser distance is acceptable. Natural vegetation must be retained within the setback area, unless the Planning Commission approves its removal.

The applicant has proffered to contribute cash towards mitigating the traffic impact of the residential development (Proffered Condition 3). According to Proffered Condition 3, if the developer dedicates the Powhite Parkway Extended right of way as proffered, the cash proffer payment for road improvements will be reduced in an amount equal to \$1,000,500 ("credit amount"). The applicant derived this credit amount by calculating, based on the current alignment for the road, the acreage (23.5 acres) for the 200-foot wide right of way plus the acreage (43.2 acres) of the 200-foot wide noise setback on each side of Powhite Extended. The applicant is requesting the credit amount based on the total 66.7 acres at \$15,000 per acre, even though the only acreage that will be dedicated to the county will be the right of way (23.5 acres). If the final alignment for Powhite Parkway Extended shifts, the proffer would allow the same credit amount regardless of the actual acreage dedicated.

The applicant has not addressed the full impact of this development on area roads, including dedication of the Powhite Parkway Extended right of way. Therefore, staff cannot support this request.

Financial Impact on Capital Facilities:

		<u>PER UNIT</u>
Potential Number of New Dwelling Units	484*	1.00
Population Increase	1316.48	2.72
Number of New Students		
Elementary	116.16	0.24
Middle	62.92	0.13
High	82.28	0.17
TOTAL	261.36	0.54
Net Cost for Schools	2,345,948	4,847
Net Cost for Parks	335,412	693
Net Cost for Libraries	181,500	375
Net Cost for Fire Stations	194,084	401
Average Net Cost for Roads	1,988,756	4,109
TOTAL NET COST	5,045,700	10,425

\*Based on a proffered maximum of two (2) units per acre (Proffered Condition 4). The actual number of units developed and corresponding impact may vary.

As noted, this proposed development will have an impact on capital facilities. Staff has calculated the fiscal impact of every new dwelling unit on schools, roads, parks, libraries and fire stations at \$10,425 per unit. The applicant has been advised that a maximum proffer of \$9,000 per unit would defray the cost of the capital facilities necessitated by this proposed development. The applicant has been further advised that a maximum proffer of \$4,815 per unit would defray the cost of capital facilities necessitated by development of the age-restricted portion of the proposed development, as it will not have an increased impact on school facilities.

The applicant has offered cash to assist in defraying the cost of this proposed zoning on such capital facilities (Proffered Condition 3). However, in addition, the applicant has proffered to pay an amount reduced for the road component in exchange for the dedication to Chesterfield County of the Powhite Parkway Extended right of way. Accordingly, the County's ability to provide adequate road facilities to its citizens will be adversely impacted. Staff is not supportive of the proffer for dedication as is further discussed in the Transportation Section of the Request Analysis. Should the applicant not dedicate the right of way, staff finds the proffered condition consistent with the Board of Supervisors' Policy, and proffers accepted from other applicants.

The Planning Commission and the Board of Supervisors, through their consideration of this request, may determine that there are unique circumstances relative to this case that may justify acceptance of proffers below the value of the maximum acceptable amount.

## LAND USE

### Comprehensive Plan:

Lies within the boundaries of the Upper Swift Creek Plan which suggests that the property is appropriate for residential development of 2.0 units per acre or less. The Plan also suggests that various types of housing, to include clustered detached single family dwellings may also be appropriate if included within a large coordinated planned development.

### Area Development Trends:

Properties to the north are zoned R-40 and developed as part of the North Hundred Subdivision. Properties to the south are zoned Agricultural (A) and are occupied by a single family residence or are currently vacant. Property to the west is zoned R-15 with tentative approval for the Halsley Subdivision development. Properties to the west are zoned Agricultural (A) and Residential (R-15) and are occupied by single family residences or are currently vacant, or are zoned Corporate Office (O-2) with Conditional Use Planned Development as part of the original Greenspring mixed use project. It is anticipated that residential development at densities of 2.0 units per acre or less will continue west of Otterdale Road, consistent with the suggestions of the Upper Swift Creek Plan.

### Site Design:

The 242 acre tract proposed for R-12 zoning may be developed for cluster homes and/or single family residential uses, both of which are discussed in further detail herein. If the property is developed for both dwelling types, the Textual Statement requires the submission of a conceptual plan to either the Planning Commission or Planning Department for approval. At the time of review of a conceptual plan, conditions may be imposed to insure land use compatibility and transition. (Textual Statement Item A)

### Density:

A maximum of 2.0 dwelling units per acre has been proffered, yielding an overall maximum project density of 484 dwelling units. (Proffered Condition 4)

### Lot Size:

The Ordinance requires a minimum lot area of 12,000 square feet in a Residential (R-12) District. To address concerns of area residents, the applicant has proffered that any lots that adjoin North Hundred Subdivision will have a minimum lot area of 25,000 square feet. Further, no more than twenty-five (25) lots within the development will be located contiguous to this adjacent to North Hundred Subdivision. (Proffered Condition 5)

### Dwelling Types:

As previously noted, two (2) dwelling types are proposed. Where common areas are to be provided within the development, the Ordinance requires that the ownership and maintenance responsibilities be established.

### Cluster Homes:

Cluster homes are proposed to be developed on individual lots having a minimum of 6,000 square feet. The density for any cluster development would be limited to six (6) units per acre. Other restrictions include building materials, setbacks, provisions of sidewalks, buffers, recreational facilities, provision of a focal point, landscaping, street trees, paved driveways and garage orientation. (Textual Statement Item B.2)

### Single Family Residential:

Single family residential uses would be required to be developed in accordance with Ordinance requirements for Residential (R-12) Districts. The minimum lot size would be 12,000 square feet. (Textual Statement Item B.3)

To address concerns of area property owners, proffered conditions address minimum house size. (Textual Statement Item B.3.a.)

The Textual Statement would require the recordation of restrictive covenants for any residential development, other than cluster uses. It should be noted that the County will only insure the recordation of the covenants and will not be responsible for their enforcement. Once the covenants are recorded, they can be changed. (Textual Statement Item B.3.c.)

### Recreational Areas and Open Space:

The applicant has agreed to provide a minimum of .75 acre of open space within or conveniently accessible to the cluster development. This open space will be located and positioned to provide a “focal point” as one (1) enters the project. Benches and other amenities are to be provided in a portion of this area to facilitate outdoor gatherings. (Textual Statement Item B.2.i.)

The applicant may also provide active and passive recreation areas within the development. The Textual Statement provides for setbacks, buffers and other restrictions to minimize the impact of such recreational uses on surrounding residential areas. (Textual Statement Item B.3.b.)

Within the cluster home developments, where lot areas are reduced below the minimum 12,000 square feet, the Ordinance will require that comparable amount of square footage be placed in open space. The Ordinance defines open space as any area “not occupied by a

building, structure, drive or parking area”. The Subdivision Ordinance will require creation of a Homeowners’ Association to maintain any common open space.

Buffer:

The Ordinance does not require the provision of a buffer between single family residential zoning districts. To address concerns of area residents, a fifty (50) foot buffer, exclusive of easements and required building setbacks, has been proffered adjacent to the south line of North Hundred Subdivision (Proffered Condition 6). As this buffer will be recorded as part of each individual lot and not in common area, it may become difficult for staff to enforce the integrity of this buffer if those property owners upon whose lot the buffer is recorded decide to clear the vegetation.

Age Restriction:

Should any housing units be designed for occupancy by seniors, proffered conditions require that such units be grouped together and identified on subdivision plans in an effort to accurately track the impacts on capital facilities. (Proffered Condition 7)

Phasing:

In response to concerns of the Matoaca District Commissioner relative to the impact of development on area roads and schools, a proffered condition was submitted for the phasing of the development. Ultimate build out will not occur until 2007 or later. (Proffered Condition 9)

Prohibition on Road Connection:

Proffered Condition 10 precludes any public road connection from the subject property, north to the adjacent North Hundred Subdivision. Sly Fox Road within the North Hundred Subdivision was platted in anticipation of a future connection to the subject property. In addition to promoting fire and emergency services safety, stub road connections provide interconnectivity among adjacent residential developments thereby reducing congestion along collector and arterial roads and providing a convenient and safe access to neighboring properties. The Planning and Fire Departments support maintaining road connections between these adjacent developments and therefore, does not support the acceptance of Proffered Condition 10.

Restrictive Covenants:

Textual Statement Item B.3.c. would require recordation of restrictive covenants for the single family portion of development. It should be noted that the County will only insure the recordation of the covenants and will not be responsible for their enforcement. Once the covenants are recorded, they can be changed.

### Model Homes:

In residential districts, model homes (sales offices) are permitted provided that, in addition to its permanent use as a dwelling, such home may be used as a temporary real estate office. The applicant is requesting the use of a temporary sales office to be located first within a modular office unit and then within the facilities housing recreational uses on the request property. Given that the modular office unit nor the planned recreational facilities are dwellings, sales would not be permitted. Conditions establish this use as temporary and subject to all other restrictions applied to model homes within residential districts, which will ensure the residential character of the surrounding area is maintained. (Textual Statement Item B.1)

### CONCLUSIONS

While the proposed residential zoning and land use complies with the Upper Swift Creek Plan which suggests that the property is appropriate for residential development of 2.0 units per acre or less, the request fails to address the full impact of this development on area roads, including the dedication of the Powhite Parkway Extended right of way.

The proffered conditions do not fully address the impacts of this development on necessary capital facilities, as outlined in the Zoning Ordinance and Comprehensive Plan. Specifically, the need for roads is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program, and the impact of this development is discussed herein. The proffered conditions do not adequately mitigate the impact on road facilities, thereby not insuring adequate service levels are maintained and protecting the health, safety and welfare of County citizens.

Given these considerations, denial of this request is recommended.

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### CASE HISTORY

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#### Planning Commission Meeting (5/18/04):

At the request of the applicant, the Commission deferred this case to the Commission's July 20, 2004, public hearing.

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#### Staff (5/19/04):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than May 24, 2004, for consideration at the Commission's July public meeting. Also, the applicant was advised that a \$250.00 deferral fee must be paid prior to the Commission's public hearing.

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Applicant (6/9/04):

The deferral fee was paid.

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Meeting with Area Property Owners, Applicant, Staff and Matoaca District Commissioner (6/9/04):

A meeting was held to discuss the request. Concerns expressed by area property owners included impacts on transportation and schools, availability of public utilities to North Hundred Subdivision, a potential road connection to North Hundred Subdivision, condominium development and the size and number of lots as well as buffers adjacent to North Hundred Subdivision. The applicant agreed to proffer larger lot sizes and a maximum number of lots adjacent to North Hundred Subdivision as well as a buffer between the developments, and to preclude any road connection to Sly Fox Road within the North Hundred Subdivision.

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Applicant (6/21/04):

The applicant withdrew the exception to permit condominiums with this request.

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Applicant, Staff and Matoaca Planning Commissioner (6/30/04):

A meeting was held to discuss transportation improvements and park needs along Swift Creek. It was generally agreed that the applicant and the Transportation Department would continue discussions relative to the proffered conditions to clarify the applicant's intent.

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Applicant (7/19/04):

Revised proffered conditions and textual statement were submitted.

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Planning Commission Meeting (7/20/04):

On their own motion, the Commission deferred this case to August 17, 2004.

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Staff (7/21/04):

The applicant was advised in writing that any significant new or revised information should be submitted no later than July 26, 2004, for consideration at the Commission's August 17, 2004, public hearing.

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Applicant (7/26/04):

Revised proffered conditions and Textual Statement were submitted.

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Planning Commission Meeting (8/17/04):

The applicant did not accept the recommendation. There was support present indicating that the development would extend public water to the surrounding area and that the proffers would preclude a road connection to North Hundred Subdivision thereby minimizing the impact on that adjacent development.

There was opposition present. Concerns were expressed relative to area road conditions; credits for dedication of right of way; and impacts on schools.

Mr. Bass indicated that the applicant had failed to adequately address the impact on capital facilities.

Mr. Gecker indicated that the application had been filed after the Board's resolution which states that any cases within the boundaries of the Upper Swift Creek Plan filed after February 11, 2004, would be deferred for one (1) year. He indicated that the Commission should pause until the Plan could be amended.

On motion of Mr. Bass, seconded by Mr. Gulley, the Commission recommended denial of this request.

AYES: Unanimous.

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The Board of Supervisors, on Wednesday, September 22, 2004, beginning at 7:00 p.m., will take under consideration this request.

Date: March 1, 2004  
Revised: May 24, 2004  
Revised: June 7, 2004  
Revised: June 10, 2004  
Revised: June 17, 2004  
Revised: June 21, 2004  
Revised: July 14, 2004,  
Revised: July 15, 2004,  
Revised: July 26, Replaces all previous versions.

## **TEXTUAL STATEMENT**

This is a request to rezone the entire Property to R-12 with a Conditional Use Planned Development (CUPD) that will permit development of a mixed use, planned community including single family residences and cluster homes. Except as qualified herein, uses permitted in the Residential (R-12) District and active and passive recreation uses shall be permitted throughout the Property. In addition, the following uses, as more fully defined below, shall also be permitted:

### **A. General Requirements Applicable to All Uses**

Mixing of Uses. There shall be no “mixing” of uses (e.g. if the Property is to be developed for cluster homes, all of the Property shall be developed as cluster homes, or if the Property is developed for Residential (R-12) uses, all of the Property shall be developed for Residential (R-12) uses). Provided, however, the mixing of uses may be permitted if a conceptual plan is submitted for review and approval and the conceptual plan addresses land use transitions and compatibility between uses within the Property itself as well as with adjacent properties. Land use compatibility and transitions may include, but not necessarily limited to, the exact location of uses, buffers, and site design. Such conceptual plans shall be approved by either the Planning Department or the Planning Commission, at the election of the developer, and such review shall be subject to appeal in accordance with sections 19-268(d) and 19-269(e) of the County Code.

### **B. Requirements for Specific Uses**

#### **1. Temporary Model Home within Modular Unit.**

One temporary model home shall be permitted in a modular unit provided:

- a) Such unit shall be utilized for a maximum of two (2) years from the date of tentative subdivision approval. At the end of two (2) years, the temporary sales trailer shall be removed and sales activities may be located within facilities housing recreational uses on the property.

- b) Such unit shall be subject to the requirement sec. 19-65(a)(2) through (5) of the ordinance.

## 2. Cluster Homes

Single Family detached cluster homes shall meet the following requirements:

- a) Lot Area and Width. Each lot shall have an area of not less than 6,000 square feet and a lot width of not less than fifty (50) feet.
- b) Density. The overall density shall not exceed six (6) units per gross acre.
- c) Building Materials. Dwelling units shall be constructed of brick veneer, composition siding, vinyl siding or a combination thereof and twenty (20) year asphalt or fiberglass shingles.
- d) Front, Corner Side and Rear Yard. For principal structures, front, corner side and rear yards shall have a minimum depth of twenty-five (25) feet. Accessory structures shall have a twenty-five (25) foot front yard setback but no rear yard setback.
- e) Side Yards. Principal structures shall be located no more than five (5) feet from one side Property line, no less than ten (10) feet from the opposite side Property line, and among every group of three (3) adjacent dwellings fronting on the same street there shall be a minimum of twenty (20) feet of space between at least two (2) of them; provided, however, that, if the overall intent of providing visual separation and clustering is achieved for the cluster home development, the Planning Commission, at the time of tentative subdivision review, may approve exceptions to these side yard requirements. The tentative subdivision, final check and record plats shall identify the specific setback criteria for each lot. Accessory structures shall have no side yard setback.
- f) Sidewalks. Sidewalks shall be provided that facilitate pedestrian access within the Development, to the recreational areas in the Development, and to the overall project. The exact location and design of the sidewalks shall be determined by the County at the time of tentative subdivision review; provided, however, that unless the Planning Commission determines at the time of subdivision review that an alternative system will accomplish the spirit and intent of this requirement, sidewalks shall be installed on those portions of both sides of all roads that have cluster homes fronting the road.
- g) Buffers. Buffers shall comply with Section 17-70 of the Subdivision Ordinance along roads and shall be located within recorded open spaces.

- h) Landscaping. Landscaping shall be provided around the perimeter of all buildings, between buildings and driveways, within medians, and within common areas not occupied by recreational facilities or other structures. Landscaping shall comply with the requirements of the Zoning Ordinance, Sections 19-516 through 19-518(f). Landscaping shall be designed to: minimize the predominance of building mass and paved areas; define private spaces; and enhance the residential character of the development. The exact number, spacing, arrangement, and species shall be approved by the Planning Department prior to issuance of any building permit.
- i) Recreation Area/Open Space. A minimum of 0.75 acres of open space/recreation area shall be located and positioned to provide a “focal point” as one enters each cluster development. Part of this area shall be “hardscaped” and have benches and other amenities that accommodate and facilitate outdoor gatherings. This area shall be developed concurrently with development of the first phase of each cluster development, and its exact design and location approved at the time of tentative subdivision review.
- j) Garages. All dwellings that provide a garage shall employ side or rear entry garage designs except that front entry garages may be permitted if the Planning Director determines at the time of tentative subdivision review that, based on the design of individual units, front entry garages would not have an adverse effect on the streetscape.
- k) Street Trees. Street trees shall be planted or retained along each side of roads and driveways except for individual driveways. The exact spacing, species and size shall be approved at the time of tentative subdivision review.
- l) Paved Driveways. All dwelling units shall have paved driveways. The exact treatment shall be approved at the time of tentative subdivision plan review.

### **3. Residential (R-12)**

All dwellings other than Cluster Homes shall meet the requirements of the Residential (R-12) District as well as the following requirements:

- a) Minimum Square Footage for Single Family Dwellings. With the exception of Cluster Homes, the minimum gross floor area for single family detached homes shall be as follows:
  - 1 story: 1700 square feet;
  - More than 1 story: 2000 square feet.

- b) Recreation Areas. At the election of the developer, active and passive recreation areas may be provided. Such recreation areas shall be subject to the following requirements:
- (i) With the exception of playground areas which accommodate swings, jungle gyms, or similar facilities and tennis courts, all outdoor play fields, swimming pools, and similar active recreational areas shall be located a minimum of one hundred (100) feet from adjacent properties zoned or designated on the County's Comprehensive Plan for residential use, a minimum of one hundred (100) feet from any existing or proposed single family residential lot line, and a minimum of fifty (50) feet from any existing or proposed road.
  - (ii) Within the one hundred (100) and fifty (50) foot setbacks, a fifty (50) foot buffer shall be provided along the perimeter of all active recreational facilities except where adjacent to any existing or proposed road. This buffer shall conform to the requirements of Section 19-251(a) through (h) and 19-522(a)(2) of the Zoning Ordinance for fifty (50) foot buffers.
  - (iii) Any playground area (i.e. areas accommodating swings, jungle gyms, or similar such facilities) and tennis courts shall be located a minimum of forty (40) feet from all property lines. A forty (40) foot buffer shall be provided along the perimeter of these recreational facilities except where adjacent to any existing or proposed roads. This buffer shall conform to the requirements of Section 19-251(a) through (h) and 19-522(a)(2) of the Zoning Ordinance for fifty (50) foot buffers.
  - (iv) Nothing within this condition shall prevent development of indoor facilities and/or parking within the one hundred (100) foot setback.
  - (v) There shall be no outside public address or speaker system.
  - (vi) Exterior lighting for recreational uses shall comply with Section 19-573 of the Zoning Ordinance, and the maximum height for light posts shall not exceed twenty (20) feet.
  - (vii) The location of all active recreational uses shall be identified in conjunction with the submittal of the first tentative subdivision plan.

(viii) In conjunction with the recordation of any lot adjacent to active recreational area(s), such area(s) shall be identified on the record plat along with the proposed recreational uses and required conditions.

- c) Covenants. For all properties containing single family detached dwellings (except Cluster Homes), the following Declaration of Restrictions shall be recorded in conjunction with the recordation of any subdivision plat:

THE OWNERS do hereby declare that said Property is to be held, owned, conveyed, used and occupied subject to the following restrictive covenants:

- (i) An Architectural Review Committee, hereinafter called "ARC" shall be comprised of Douglas R. Sowers, his heirs, personal representatives, successors, and assigns, any of which may act. The ARC shall coordinate each residence and lot and shall establish reasonable rules and regulations relating to the procedure for architectural approvals and general guidelines for architectural plans according to the following architectural guidelines:

All plans to be approved prior to commencement of construction on each lot. House location to be approved prior to construction.

Roof

Minimum 7/12 pitch  
Minimum 12" overhang  
No uncolored galvanized flashing

Foundation

Brick foundations  
Brick or stone on chimney chases

Dwelling

Main body of house to be a minimum of 30 feet in width  
No single story homes adjacent to each other

Stoops and walks

Brick stoops or painted fir (no salt treated stoops unless approved by ARC)

Minimum 40 sq ft  
Concrete sidewalks  
Painted lattice under front porches, painted risers on steps, painted pickets and painted band on front porches

#### Siding

Panel shutters on front windows  
Minimum 1x6 rake and fascia boards  
No T1-11 siding

#### Landscaping

\$300 allowance for shrubs  
White painted mailbox and lamp post consistent throughout subdivision  
Builder to leave as many trees as possible over 6 inches at the base

#### Base

3 color exterior paint except for 2 colors if painted white

Satellite Dishes and swimming pool design, location, and screening to be approved prior to installation.

The ARC reserves the right to modify the above restrictions or any other imposed deed restrictions in all or in part without notice. In addition, the ARC reserves the right to make any special exceptions to these conditions on an individual basis; however, any special exception(s) shall not be deemed as waiver of the restriction(s) as they may apply in the future.

The ARC reserves the right to disallow construction of architecturally similar homes adjacent to each other.

The ARC shall not be liable to any Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person arising out of or in any way relating to the subject matter of any review, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the ARC whether given, granted or withheld.

- (ii) No repairs, changes in color, excavations, changes in grade, major landscaping, or other work which in any way alters the exterior appearance of any Lot or improvement located thereon from its



natural or improved state existing on the date such Lot was first conveyed in fee by Douglas R. Sowers, his successors and/or assigns, to an owner (including clearance of trees and vegetation, driveways, entranceways, fences, mailboxes, and lamp post structures), shall be made or done until the plans, specifications, working drawings, and proposals for the same showing the nature, kind, shape, type, color, materials, and location of the improvements on the Lot and a landscaping plan shall have been submitted to and approved in writing to ensure harmony of external design and location in relation to surrounding structures, topography, and applicable governmental requirements by the ARC.

- (iii) All easements along road frontage and lot lines as may be shown on any subdivision plat are hereby reserved unto the developer, his personal representatives, heirs, assigns, or agents, for the purpose of drainage or furnishing light, telephone or any other utility to the Property.
- (iv) Lots shall be occupied and used as follows:
  - a) Lots shall be used for private residential purposes only and no building of any kind whatsoever shall be erected or maintained thereon except for:
    - (1) One private dwelling house with each dwelling being designated for occupancy by a single family
    - (2) Private garages for the sole use of the respective owners of the Lots upon which garages are erected
  - b) A single building for the storage of non-commercial vehicles, boats, equipment, and tools used in maintenance of the Lot upon which erected
- (v) No building shall be located on any Lot nearer to any street or to a side line than is permitted under the applicable local zoning ordinance in effect at the time such building is constructed.
- (vi) No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.
- (vii) The construction of any structure on a Lot shall be completed within a period of nine (9) months after the beginning of

construction. During construction, the Lot shall be maintained in a clean and uncluttered condition, free of unnecessary accumulation of waste and building debris.

- (viii) It is the responsibility of each owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on his Lot. All improvements on each Lot shall be kept in good repair, and, where necessary, painted on a regular basis. No portion of the Property shall be used or maintained as a dumping ground for rubbish. Outdoor burning of leaves, trash or other debris shall not be permitted. All trash, garbage, and other waste shall be kept in sanitary containers which shall be surrounded by wooden screening with such screening being approved by the ARC, or otherwise out of sight from the street.
- (ix) No nuisance or offensive activity shall be permitted or maintained upon any Lot, nor shall any poultry, hogs, rabbits, cattle, or other livestock be kept thereon with the exception of dogs, cats, or other normal household animals kept as pets thereon in numbers not exceeding those permitted by the law, provided they are not kept, bred or maintained for any commercial purposes, and must be kept under control of their owner when outside the owner's premises, nor constitute a nuisance in the opinion of the ARC, its successors or assigns. No use shall be made of any Lot which will depreciate or adversely affect the surrounding Lots or the Property.
- (x) Each residence constructed on a Lot shall be connected to a public sewer.
- (xi) No Lot shall be further subdivided without prior written consent of the ARC. However, the developer hereby expressly reserves for itself, its successors, and assigns, the right to re-subdivide any Lot or Lots shown on any recorded plan of subdivision of the Property prior to the delivery of a deed to said Lot or Lots without the prior written consent of any Lot Owner.
- (xii) Except for emergencies, which emergencies must be proven to the satisfaction of the ARC, no trees with a diameter of six (6) inches or more, measured two (2) feet from the ground, no flowering trees, shrubs, or evergreens may be cleared from any Lot without prior written permission of the ARC. In the event a Lot Owner violates this covenant the Lot Owner will be fined \$25.00 per inch for every such tree removed and it shall be assumed that each tree had a diameter of twelve (12) inches.

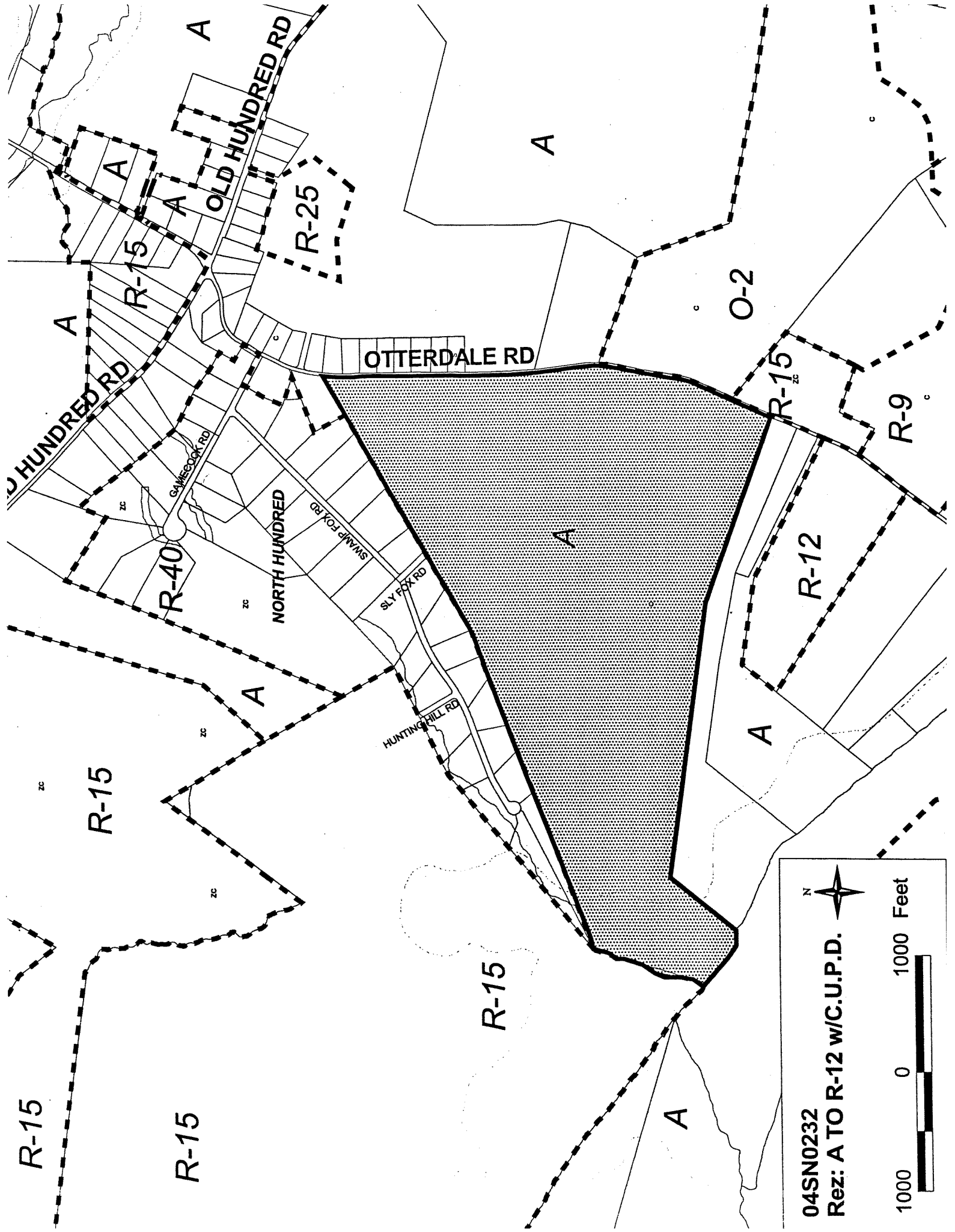
- (xiii) No commercially licensed vehicles, motor vehicles, recreational vehicles, boats, disabled vehicles, vehicles without a current state license or state inspection sticker, machinery, or other equipment shall be visible from the street for a period exceeding twenty-four (24) hours. Any screening of such vehicles must be approved by the ARC. This covenant shall not apply to vehicles and equipment used in connection with construction upon Lots, while such construction is in progress, or in connection with the development of the Property. It shall be the responsibility of each Owner to construct and maintain suitable and adequate parking space on his Lot and all vehicles shall be parked thereon.
- (xiv) The operation of unlicensed motor bikes, ATVs, and motorcycles on the lots and entrance area shall be subject to regulation by the Owners and may be prohibited entirely.
- (xv) No external illumination on any Lot shall be of such a character or intensity or so located as to interfere with any other Owner's use or enjoyment of his Lot. No neon or flashing lights shall be permitted. All external lighting must be approved as to size and intensity by the ARC.
- (xvi) Except during construction, no signs of any kind shall be displayed to the public view on any lot except:
  - a) One sign not exceeding four (4) square feet in areas used for the purpose of advertising the Lot for sale or rent; and
  - b) One sign not exceeding four (4) square feet in area which identifies the resident occupying the Lot, the name of the Lot, or both.
- (xvii) No temporary, portable, or above-ground swimming pools may be erected on any Lot that will be visible from the street.
- (xviii) Except as otherwise provided by applicable law, no outside antennas, television or otherwise, shall be permitted; provided, however, that until cable television becomes available to the Property, exterior television antennas shall be permitted, provided they do not extend more than five (5) feet past the roof line of any dwelling. No satellite dishes shall be visible from the street.
- (xix) No construction shall be permitted without appropriate erosion control so as to prevent the discharge of any soil or other material onto any other Lot or Common Area. The ARC may establish reasonable rules and regulations establishing a maximum

percentage of any Lot which may be covered by a building, driveway or other structure.

- (xx) No fences or walls not constituting a part of a building shall be erected, placed, or altered on any Lot nearer to any street than the minimum exterior setback line, but in no case shall it extend further forward than the rear of the house except with the approval of the ARC.
- (xxi) No shrubs, trees, fences, or structures of any type shall be erected which may partially or fully block vehicular sight distance, as set forth in the Virginia Highway Department regulations, or any roadway.
- (xxii) No lot owner shall disturb or siltate shoulder, backslopes, ditches, pavement, curb and gutter, driveway culverts, or any other improvements within the public right-of-way. Each Lot Owner agrees to be responsible for disturbances, damages, and/or siltation caused by themselves, their employees, suppliers, contractors, or others, and shall have fourteen (14) days from the receipt of a letter from the developer and/or the ARC to correct the damage. If a Lot Owner fails to correct the damage in a workmanlike manner, then the developer or its assigns shall have the right to correct the damage and bill the Lot Owner directly on a cost-plus-fifty-percent (50%) basis. If a Lot Owner does not make payment within thirty (30) days of presentation of the bill, a two percent (2%) per month service charge shall be applied to such bill.
- (xxiii) Any one or more of the Covenants and Restrictions imposed in Paragraphs (a) through (v) hereof may be waived, modified, or rescinded, in whole or in part, as to all of the Property or any Lot, by written instrument of the ARC.
- (xxiv) Invalidation of any of these covenants and conditions, by court adjudication or otherwise shall in no way modify, affect, or invalidate any of the other covenants and conditions contained herein which shall remain in full force and effect.
- (xxv) Each and every covenant and condition herein imposed may be enforced by the undersigned or the owner of any Lot by appropriate proceedings at law or in equity against any party violating or attempting or threatening to violate the same to prevent or rectify such violation and or recover damages therefore. The failure of an owner or the undersigned to bring any such proceeding shall not be considered as a waiver of any rights at law

or in equity that any such party may have for past or future violation of any covenant contained herein.

- (xxvi) These covenants and conditions are to run with the land and shall be binding upon subsequent owner or owners and all parties claiming through or under such owner or owners for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the owners of the Lots has been recorded, revoking said covenants, or agreeing to change said covenants in whole or in part.



04SN0232  
Rez: A TO R-12 w/C.U.P.D.



ROUTE 288

CHARTER COLONY

RECOMMENDED 120' R/W  
FROM 288 TO EW ARTERIAL

WOOLRIDGE EXTENDED

PROPOSED  
CUL-DE-SACS

OLD HUNDRED

CASE 04SN0232

POWHITE EXTENDED

EW ARTERIAL

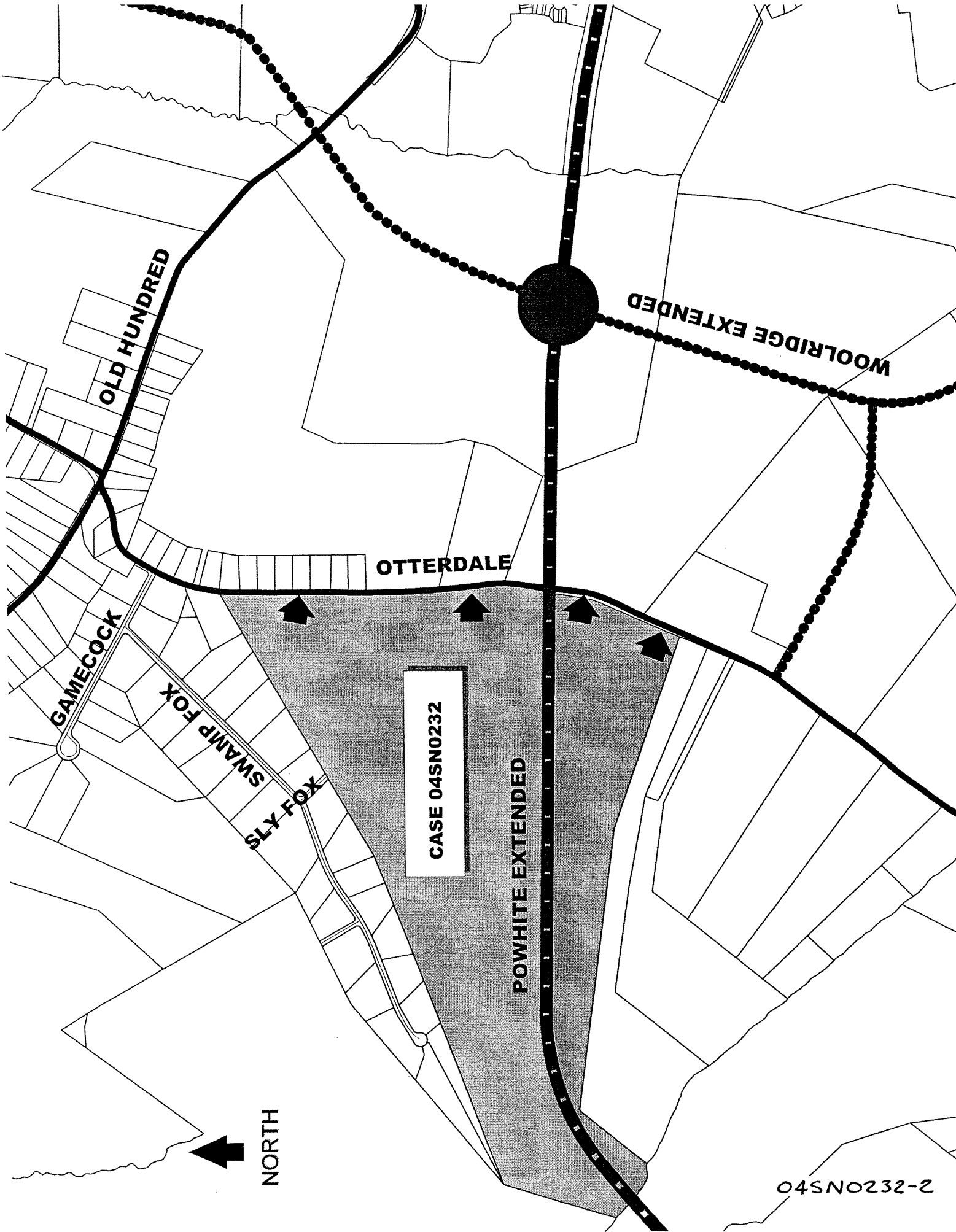
OTTERDALE

PROPOSED  
REALIGNMENT

RECOMMENDED  
ROAD NETWORK



04SN0232-1



04SN0232-2